

## REMARKS

In a final Office Action dated August 20, 2008, the Examiner rejected the claims under 35 U.S.C. §§ 112 and 102(e). Applicants respond to the Examiner's rejections below. All newly presented amendments are intended to place the claims into condition for allowance. In view of the amendments above and the remarks below, Applicants respectfully request reconsideration of the merits of this application.

### Telephonic Interview

Applicants and their representatives thank Examiner Pak for his time during a telephonic interview on August 26, 2008. During the interview, the parties discussed the rejections, and Examiner Pak indicated that an amendment to clarify whether the complement was to the polynucleotide or amino acid sequence would likely resolve the outstanding issues.

### Rejection Under 35 U.S.C. § 112

The Examiner rejected Claims 1, 19-20, 28-29 and 52 under 35 U.S.C. § 112, second paragraph, for being indefinite. The Examiner alleged that the phrase "complement of SEQ ID NO:8" is unclear because one of ordinary skill in the art does not know if the complement is to the polynucleotide or amino acid sequence. Applicants amend Claims 1 and 20 so that the phrase now refers to a polynucleotide "selected from the group consisting of a polynucleotide that encodes SEQ ID NO:8 or a polynucleotide fully complementary to a polynucleotide that encodes SEQ ID NO:8." Applicants submit that the amended phrase makes clear that the complementary sequence is a polynucleotide. In view of these amendments, Applicants respectfully request reconsideration of this rejection as applied to the claims.

### Rejection Under 35 U.S.C. § 102(e)

The Examiner rejected Claims 1, 19-20, 28-29 and 52 as anticipated by U.S. Patent No. 6,342,357 to Splawski & Keating. The Examiner alleged that Splawski & Keating anticipate the claims by disclosing a nucleic acid encoding a SCN5A polypeptide having an alteration at amino acid position 552 (arginine instead of glycine) that is 99.5% identical to SEQ ID NO:8. As noted above, Applicants amend Claims 1 and 20 to recite that the polynucleotide is "selected from the

group consisting of a polynucleotide that encodes SEQ ID NO:8 or a polynucleotide fully complementary to a polynucleotide that encodes SEQ ID NO:8."

Splawski & Keating cannot anticipate the amended claims because it does not disclose SEQ ID NO:8. Instead, Splawski & Keating discloses a polypeptide that differs from the encoded polypeptide at amino acid positions 552, 558, 618, 1027 and 1077. In view of the amendments above and the remarks herein, Applicants respectfully request reconsideration of this rejection as applied to Claims 1-2, 7, 10, 13, 16-20, 23, 25 and 27-29.

Fees

No fee is believed due in connection with this submission. However, if a fee is due, in this or any subsequent response, please charge the fee to Deposit Account No. 17-0055. Likewise, no extension of time is believed due; however, if any extension is required in this or any subsequent response, please consider this to be a petition for the appropriate extension of time and a request to charge the petition fee due to the same Deposit Account.

Respectfully submitted,

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